

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SARAH J. HEFFLEY, JUDGE

DIVISION II

CA CR 06-1018

May 16, 2007

DONOVAN SCOTT

APPELLANT

APPEAL FROM THE CIRCUIT COURT
OF FRANKLIN COUNTY
[NO. CR-2005-229]

V.

HONORABLE DENNIS CHARLES
SUTTERFIELD, JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

The appellant, Donovan Scott, entered conditional pleas of guilt to charges of possession of marijuana with intent to deliver and possession of cocaine with intent to deliver, for which he was sentenced to a total of six years in prison.¹ Pursuant to Ark. R. Crim. P. 24.3, appellant has reserved the right to appeal the denial of his motion to suppress evidence found in a consensual search of his vehicle. For reversal of that decision, appellant contends that the search exceeded the scope of his consent. We disagree and affirm the trial court's ruling.

On December 8, 2005, Trooper Chris Goodman, a highway patrolman for the Arkansas State Police, had positioned his vehicle in the interior median of Interstate 40 near the 34-mile marker. At approximately 10:00 p.m., he observed a vehicle that had no license plate traveling east bound in

¹ Appellant had also been charged with possession of drug paraphernalia, but this charge was nolle prossed as part of the plea agreement.

the right-hand lane of traffic. A Dodge pickup truck, driven by appellant, was behind this vehicle. Trooper Goodman decided to initiate a stop of the vehicle that had no license plate, and he pulled into the left lane of the interstate after both vehicles had passed and were a couple of hundred yards away. According to Goodman, the truck appellant was driving jerked sharply onto the right median and swerved back into the right lane, and then abruptly swerved into the left lane of traffic. Because of this erratic driving, Goodman decided to stop appellant's truck instead of the vehicle without a license plate.

The roadside encounter between Trooper Goodman and appellant was captured on video tape. Appellant told Goodman that he had been in Oklahoma looking for a girl, whom he had not found. When Goodman asked where this search had taken place in Oklahoma, appellant responded that he thought it had been on Washington Street. Goodman inquired as to whether this street was in Oklahoma City or in Tulsa, and Goodman testified that appellant "just kind of agreed that it was Oklahoma City." It was Goodman's impression that either appellant did not know or was not willing to tell Goodman where he had been. Appellant also advised that he was traveling to South Carolina to visit his girlfriend. Goodman testified at the hearing that appellant was "shaking like a leaf" during this discussion.

During their conversation, Goodman also learned that appellant was from Jamaica and that he had been in the United States since 1996. Goodman attempted to check appellant's INS status, but he decided to forgo that effort because of the delay and difficulty in obtaining that information. Goodman also decided to give appellant a warning for improper lane change. At this time, Goodman asked appellant if he had "any guns or anything illegal in the truck." Appellant responded that he did not, and Goodman asked, "Do you care if I check real quick and I will get you out of here?" Appellant motioned toward the truck and replied, "Go ahead."

The video shows that Trooper Goodman began the search by looking into the interior of the truck on the driver's side. He then moved to the bed of the truck that was covered with a hard top. Goodman could not get the top open, and he had to ask appellant how to unlock it. Goodman then proceeded to open the covering and searched the bed of the truck, which was cluttered with what appeared to be appellant's belongings. Goodman next searched the inside of the truck on the passenger's side, noting that he found three bottles of cologne. When he finished searching that area, he stooped down on his knees and looked underneath the truck on the passenger side. He then walked back to the driver's side and looked underneath the truck. There, he found a large metal box that had been affixed to the undercarriage of the truck. Based on his experience, he recognized that the box was a false compartment that served no purpose other than to conceal contraband.

During the search, appellant was standing at the front of his truck with another officer. When the metal box was discovered, appellant was taken into custody, and the truck was driven to a nearby garage where the metal box was opened. The box contained fifteen pounds of marijuana and a kilogram of cocaine.

In denying the motion to suppress, the trial court found that the consent given by appellant was general in nature and not so restrictive as to prevent Trooper Goodman from detecting the hidden compartment. When reviewing a trial court's ruling on a motion to suppress, this court conducts a de novo review based on the totality of the circumstances, reviewing findings of historical facts for clear error, giving due weight to the inferences drawn by the trial court. *See Welch v. State*, 364 Ark. 324, ___ S.W.3d ___ (2005). We reverse only if the trial court's ruling is clearly against the preponderance of the evidence. *Id.*

Rule 11.1(a) of the Arkansas Rules of Criminal Procedure provides that an officer may conduct searches and make seizures without a search warrant or other color of authority if consent

is given to the search. However, a search based on consent cannot exceed, in duration or physical scope, the limits of the consent given. Ark. R. Crim. P. 11.3. The standard for measuring the scope of a suspect's consent is that of objective reasonableness, or what the typical reasonable person would have understood by the exchange between the officer and the suspect. *Flores v. State*, 87 Ark. App. 327, 194 S.W.3d 207 (2004) (citing *Florida v. Jimeno*, 500 U.S. 248 (1991)).

In this case, appellant points out that the officer asked if there were “any guns or anything illegal in the car” and sought permission to search by asking if he could “check real quick.” Appellant contends that the requested search was limited to the interior of the vehicle and that the officer's search of the undercarriage exceeded the physical boundaries of the consent that was given. We disagree.

Our courts have recognized that, where there are no limits placed on a search, the consent to search includes any containers found inside the vehicle. *Miller v. State*, 342 Ark. 213, 27 S.W.3d 427 (2000); *Flores v. State*, *supra*. More to the point, in *Turner v. State*, 94 Ark. App. 259, ___ S.W.3d ___ (2006), the officer found a false compartment beneath the bed of the truck. The appellant conceded that he had consented to a search but argued that the consent was limited to the interior of the truck. We rejected that argument, concluding that the consent was general in nature and thus not limited to a search of the interior. As did the court in *Miller v. State*, *supra*, we also considered it relevant that the appellant did not object to the officer's examination of the exterior of the vehicle. In that regard, we noted the decision in *United States v. Martel-Martines*, 988 F.2d 855 (8th Cir. 1993), where the court held that a driver's failure to object when the officer punctured a hole in a false compartment under the vehicle, a procedure performed in his presence, made it objectively reasonable for the officer to conclude that his actions were within the scope of the consent granted by the driver.

From our de novo review, we conclude that it was objectively reasonable for the officer to believe that his perusal of the truck's exterior was within the scope of the consent that was given. We perceive nothing in the request for the search or the consent appellant gave as confining the search to the interior of the truck. Appellant also raised no objection when the officer first looked under the truck on the passenger side, before proceeding to the driver's side where the false compartment was discovered. We are not able to say that the trial court's denial of the motion to suppress is clearly erroneous.

Affirmed.

MARSHALL and VAUGHT, JJ., agree.